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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

No. 72-14

ROBERT JAY CARLTON,

Petitioner,

versus

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITIONER'S REPLY TO MEMORANDUM IN OPPOSITION FILED BY THE UNITED STATES

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In response to the Petition for Writ of Certiorari filed in this cause, the respondent, United States of America, urges that this Court reject both Fourth Amendment contentions advanced by the petitioner.

Initially, the government argues that the airport search in Teterboro, New Jersey was consented to by the petitioner, although the record clearly shows, and the government apparently concedes, that the petitioner was never advised that no search would or could take place if his permission were declined. The government has caused the trial transcripts to be lodged with

the Clerk of this Court. It is respectfully submitted that a review of these transcripts shows rather explicitly that the "consent" secured by the government agents for this particular search was no more than acquiescence in and assent to the requests of the secret service agents.

On the question of standing to complain of the searches at the smelting site, the government still contends that this factual issue could properly be resolved by the Fifth Circuit Court of Appeals even though the petitioner's standing had never been controverted or challenged in the trial court. Although the government's memorandum argues that the petitioner testified that he was uncertain whether he had been at the smelting site during March 12, 1969, the day of the first two searches, the full transcript does not bear out this claim. The petitioner testified that he believed he was out there for about 15 or 20 minutes on that day (TR 1606). It should be further pointed out, with apologies, that the affidavits submitted by the petitioner and co-defendant Resnick in support of the petition for rehearing in the Court of Appeals contained typographical errors. More specifically, each affidavit referred to the petitioner's presence at the site during February 12, 1969, when in fact the sworn statements were intended to relate to March 12, 1969.

CONCLUSION

It is respectfully submitted that in light of the action taken in *Combs* v. *United States*, No. 71-517, decided June 26, 1972, and *Bustamonte* v. *Schneckloth*, certiorari granted, 405 U.S. 953, both Fourth Amendment ques-

tions presented for review in this Court require the granting of the instant petition for writ of certiorari.

Dated at Orlando, Orange County, Florida, this ____ day of September, 1972.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this __ day of September, 1972, copies of this Petitioner's Reply to Memorandum in Opposition Filed by the United States were mailed to the Honorable Kendell Wherry, Assistant United States Attorney, Suite 1001, Citizens National Bank Building, Orlando, Florida and to the Honorable Erwin N. Griswold, Solicitor General of the United States, Office of the Solicitor General, United States Department of Justice, Washington, D. C. 20530.

Attorney